

1 NICHOLAS J. HOFFMAN (SBN 284472)
2 nhoffman@mcguirewoods.com
3 ARIA HANGVAL (SBN 336933)
4 ahangval@mcguirewoods.com
5 McGuirewoods LLP
6 Wells Fargo Center – South Tower
355 S. Grand Avenue, Suite 4200
Los Angeles, California 90071-3103
Telephone: (213) 457-9840
Facsimile: (213) 457-9877

7 SAMUEL L. TARRY, JR. (*pro hac vice application forthcoming*)
8 starry@mcguirewoods.com
9 McGuireWoods LLP
10 1750 Tysons Boulevard Suite 1800
Tysons, Virginia 22102-4215
Telephone: (703) 712-5425
Facsimile: (703) 712-5185

12 | Attorneys for Defendant
ETSY, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

17 AS YOU SOW, a 501(c)(3) non-profit
corporation,

Case No.: 24-cv-04203-SK

18 Plaintiff

20 | v

22 | ETSY, INC. and DOES 1-20, inclusive.

Defendants

**DECLARATION OF NICHOLAS J.
HOFFMAN IN SUPPORT OF
DEFENDANT ETSY, INC.'S MOTION TO
COMPEL ARBITRATION OR, IN THE
ALTERNATIVE, TRANSFER VENUE**

Judge: Hon. Sallie Kim

Date: August 26, 2024

Time: 9:30 a.m.

Location: Courtroom C, 15th Floor

DECLARATION OF NICHOLAS J. HOFFMAN

I, Nicholas J. Hoffman, declare as follows:

1. I am an attorney at law licensed to practice before all the courts in the State of California and am a partner at McGuireWoods LLP, counsel for Defendant Etsy, Inc (“Etsy”). I submit this declaration in support of Defendant Etsy’s Motion to Compel Arbitration or, in the Alternative, Transfer Venue. I have personal knowledge of the matters set forth in this declaration, and if called as a witness I could and would competently testify thereto.

8 2. On January 18, 2024, Ms. Rachel Doughty of Greenfire Law, P.C., sent Etsy a
9 Notice of Violation on behalf of Plaintiff As You Sow (“AYS”) alleging that Etsy is violating
10 California Health & Safety Code 25249.5 et seq., commonly known as “Proposition 65” (the “First
11 Notice”). Attached hereto as **Exhibit A** is a true and correct copy of the First Notice. This notice is
12 also publicly available on the Attorney General’s website.

13 3. On March 13, 2024, the California Attorney General issued a public letter regarding
14 its review and investigation of the materials provided by AYS to the California Attorney General's
15 office in connection with the First Notice. Attached hereto as **Exhibit B** is a true and correct copy
16 of the California Attorney General's March 13, 2024 public letter. This letter is also publicly
17 available on the Attorney General's website.

18 4. On March 15, 2024, Ms. Doughty served Etsy with a second Proposition 65 Notice
19 (the “Second Notice”). Attached hereto as **Exhibit C** is a true and correct copy of the Second
20 Notice. This notice is also publicly available on the Attorney General’s website.

21 5. On March 27, 2024, the Attorney General then issued a second materially identical
22 public letter regarding its review and investigation of the materials provided by AYS to the
23 California Attorney General's office in connection with the Second Notice. Attached hereto as
24 **Exhibit D** is a true and correct copy of the California Attorney General's second public letter. This
25 letter is also publicly available on the Attorney General's website.

6. On June 18, 2024, Ms. Nuria de la Fuente emailed me a service copy of the
Complaint and associated documents in this action. Ms. de la Fuente's email signature block
identified her as the Office Manager for Greenfire Law, P.C.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America that the foregoing is true and correct.

3

4 Executed on July 18, 2024 at Los Angeles, California.

5

6

/s/ Nicholas J. Hoffman

7 Nicholas J. Hoffman

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Exhibit A



RACHEL S. DOUGHTY
2748 Adeline Street, Suite A
Berkeley, CA 94703
Phone: (510) 900-9502, ext. 706
Email: rdoughty@greenfirerlaw.com
www.greenfirerlaw.com

January 18, 2024

By Electronic Mail and U.S. Mail

Etsy, Inc.
ATTN: Josh Silverman, CEO
jsilverman@etsy.com

ATTN: Colin Stretch, Chief Legal Officer
cstretch@etsy.com
117 Adams St
Brooklyn, NY 11202

ATTN: Etsy Regulatory Request for Regulators or Government Officials
regulatory-intake@etsy.com

RE: 60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) & Demand for Supply Chain Identification

Dear Mr. Silverman and Mr. Stretch:

This firm represents As You Sow (“Noticing Party”) in connection with this notice of violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code section 25249.5, et seq. (“Proposition 65”). As You Sow is a non-profit organization working to create a safe, just, and sustainable world in which protecting the environment and human rights is central to corporate decision making.

This letter constitutes notice to the addressee that they have violated and continue to violate provisions of Proposition 65 and its implementing regulations. Specifically, the Alleged Violator—Etsy, Inc. (“Violator”—to which this letter is addressed has violated and continues to violate the warning requirement at section 25249.6 of the California Health & Safety Code, which provides, “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual[.]”

Pursuant to California Health & Safety Code section 25249.7, subdivision (d), the Noticing Party, as defined in that section, intends to bring an enforcement action against the Violator sixty (60) days after effective service of this notice unless the public enforcement agencies listed in the attached Certificate of Service have commenced and are diligently prosecuting an action to rectify these violations. A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under

Proposition 65 Notice
January 18, 2024

Proposition 65, is enclosed with the copy of this notice served to the Violator. The specific details of the violations that are the subject of this Notice are provided below.

Description of Violations

The Violator has contravened the warning requirement at section 25249.6 of the California Health and Safety Code, which provides, “[no] person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to such individual.” Violators have manufactured, produced, packaged, imported, supplied, distributed, sold or otherwise provided the consumer products containing mercury listed below directly to consumers through the Violator’s website without providing the clear and reasonable warnings required by Proposition 65 and its implementing regulations, dating at least as far back as January 2, 2023, and continuing each day through the present.

- Time Period of Exposure: The violations have been occurring since at least January 2, 2023, and are continuing to this day.
- Provision of Proposition 65 Implicated: This Notice of Violation covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code, section 25249.6, and its implementing regulations.
- Chemical Involved: The listed chemical involved in this notice of violation is mercury and mercury compounds. This chemical is recognized by the State of California as a developmental toxin. Exposure to mercury or mercury compounds occurs through ingestion, inhalation, and dermal absorption when skin-lightening creams, sold on Etsy.com’s website, are applied.
- Types of Products: The specific types of products causing the violations are skin-lightening, whitening, and “smoothing” creams containing 1 ppm or more mercury or mercury compounds, including but not limited to those products specifically listed below in **Table 1**.

Table 1

Product	Etsy Storefront ¹
Aneeza Gold Beauty Face Cream	NaturalSkincarStudio
Aneeza Gold Beauty Face Cream	OkinArewa
Aneeza Gold Beauty Face Cream	PetsUniqueBeautyCent
BeBe Special Cream	Apsarabazaars
Carotone	Hayveen
Carotone	Mama23store
Carotone	perfectobeautycouk
Carotone	QueeNikWealth
CCM	Apsarabazaars
CCM Perfect 365 White Cream	Apsarabazaars

¹ The Notice covers all skin-lightening, whitening, and “smoothing” creams containing mercury or mercury compounds, including those products listed in Table 1, whether or not sold at the storefront listed. The Storefront is provided as a courtesy so that Etsy.com can more efficiently locate and remove dangerous products from its website.

Chandni Whitening Cream	Diamonds Group
Crema la Milagrosa	Bulkmayoreo99
Crema la Milagrosa	NATURALbyLLC
Deluxe Nadinola Bleaching Cream	TheDetoxClub
Due Beauty Cream	MystiqueArtShop
Due Beauty Cream	WholesaleByHuma
Faiza	BeautyShopIndia
Faiza	Nova Jewels Art
Faiza	Creations4all786
Faiza	Cosmeticss4All
Faiza	DiamondsGroup
Faiza	iMinoosh
Faiza	KUCHIDRESS
Faiza	MystiqueArtShop
Faiza	WeddingbyASRBoutique
Faiza	WholesaleByHuma
Face Fresh Beauty Cream	iMinoosh
Face Fresh Beauty Cream	BeautyShopIndia
Goree Day Avocado and Aloevera	iMinoosh
Goree Day and Night Whitening Cream	Nova Jewels Art
Goree Day and Night Whitening Cream	OverseasTrend
Goree Day and Night Whitening Cream	ObserverFinds
Goree Day and Night Whitening Cream	PariAfghanShop
Goree Day and Night Whitening Cream	PakistanShop2023
La Tia Mana Crema Limpiadora y Curativa	La Tia Mana
Miss Key Crema Blanqueadora	OceansBeautyWellness
Nunn Care	BotanicaMexicana
Nunn Care	bulkmayoreo99
Nunn Care	GiftofHealthByPaul
Nunn Care	Menwomengiftshop
Nunn Care	Naturallylifee
Nunn Care	NATURALbyLLC
Nunn Care	TruVaShopTreasures
Nunn Care	Wellnessrootsstore

Proposition 65 Notice
January 18, 2024

Nunn Care	YadyTreasures
Snow White Armpit Whitening Underarm Cream	ShopSheida

Description of Exposures: This Notice addresses consumer product exposures to mercury and mercury compounds resulting from the acquisition, purchase, storage, consumption, or reasonably foreseeable use of cosmetics used to lighten, whiten, or “smooth” skin. Mercury is an additive or active ingredient in such cosmetics. Use of the items listed above in Table 1, as well as other items containing mercury as an active ingredient, results in human exposures to mercury.² Mercury exposure occurs in three main routes: ingestion, inhalation, or dermal absorption. Ingestion may occur post-application due to insufficient hand washing prior to eating or preparing food or touching of the mouth. Inhalation may occur due to the significant amount of mercury vapor produced by use of these creams, which can affect all household members. Dermal absorption may occur as these products are designed and specifically marketed for direct contact with skin. These exposures occur in residences throughout California where the products are used. No clear and reasonable warning is provided with these products regarding the developmental toxicity of using these products or specifically of mercury.

Pursuant to California Code of Regulations, title 11, section 3100, a Certificate of Merit is attached.³

Lack of Non-English Warning

A number of the products listed in Table 1 include non-English labeling. Those products additionally violate California Code of Regulations, title 27, section 25602, subdivision (b), for failing to carry warnings in the non-English language on the label.

Resolution of Claims Being Noticed

Based on the allegations set forth in this Notice, the Noticing Party intends to file a citizen enforcement lawsuit against the Violator unless it agrees to remedy the violations set forth above. If the Violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please contact the Noticing Party through its counsel identified below.

Preservation of Relevant Evidence

This Notice also serves as a demand that the Violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to mercury released from or during the storage, shipment, and use of skin lightening creams; purchases and sales information for such products; communications with any person relating to actual or potential exposures to mercury from the use of such products; representative exemplars of each unit of any of the brands listed above in Table 1 sold since January 2022; the content of internet displays for the products causing the violations; and all communications regarding the alleged violations.

² These products are also illegal adulterated cosmetics sold in violation of FDA regulations. (See 21 C.F.R. § 700.13(d)), and California’s Sherman Act.

³ A second copy of the entire notice and Certificate of Merit is served on the Attorney General, clearly marked “Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040” with all supporting documentation required by 11 Cal. Code Regs., § 3102 attached thereto.

Parties

This Notice is provided on behalf of the following organization:

As You Sow
Responsible Individual: Danielle Fugere
Main Post Office
As You Sow
PO Box 751
Berkeley, CA 94701
(510) 735-8158

The Noticing Parties can be contacted through counsel as identified below:

Rachel Doughty
Greenfire Law, PC
2748 Adeline Street, Suite A
Berkeley, CA 94703
(510) 900-9502
rdoughty@greenfirerlaw.com

Demand for Supply Chain Contacts

Pursuant to California Code of Regulations title 27, article 6, section 25600.2, subdivision (g) you must promptly provide As You Sow (through its counsel) with the names and contact information for each of the manufacturers, producers, packagers, importers, suppliers, and distributors of each of the products listed above in Table 1. **We expect to receive this information within a week.**

Sincerely,



Rachel S. Doughty
Greenfire Law, PC

Attachments:

Certificate of Merit (All Recipients)

Certificate of Merit Support (Attorney General only)

Certificate of Service (All Recipients)

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (“Summary”) (Noticed Party Only)

Proposition 65 Notice
January 18, 2024

Certificate of Merit

California Health & Safety Code Section 25249.7, Subdivision (d)

I, Rachel Doughty, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 18, 2024

Greenfire Law, PC

By:



Rachel Doughty

Exhibit B



ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 879-1300
Telephone: (510) 879-1300
Facsimile: (510) 622-2270
E-Mail: Susan.Fiering@doj.ca.gov

March 13, 2024

By U.S. mail and electronic delivery

Rachel S. Doughty, Esq.
2748 Adeline Street, Suite A
Berkeley, CA 94703
rdoughty@greenfirerlaw.com

RE: Proposition 65 Notice No. 2024-00232

Dear Ms. Doughty:

We write to you pursuant to the Attorney General's authority under Health and Safety Code section 25249.7, subdivision (e)(1)(A), which is part of the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65." We have reviewed the above 60-day notice of violation and accompanying certificate of merit that As You Sow LLC ("AYS") sent to Etsy, Inc. on January 18, 2024. The notice alleges that the company sells products that expose persons to mercury and mercury compounds without providing a clear and reasonable warning.

Based on our review of the notice, we have concluded that you have failed to provide sufficient information to indicate that there is a credible basis to conclude that there is merit to each element of the action on which plaintiff will have the burden of proof and that the information relied on does not prove that any affirmative defense has merit. The 60-day notice does not give AYS authority to file suit in the public interest, or to settle claims based on the alleged violations. We ask that you withdraw the notice immediately. Our position is discussed in more detail below.

Proposition 65 requires companies with ten or more employees to provide clear and reasonable warnings to persons prior to knowingly and intentionally exposing them to chemicals known to cause cancer or reproductive toxicity. (Health & Saf. Code, § 25249.6.) Persons acting in the public interest can bring a private action to enforce Proposition 65 at least sixty days after sending a 60-day notice to the alleged violators and public enforcers, unless the Attorney General or other public enforcer is diligently prosecuting an action against the violation. (*Id.*, § 25249.7, subd. (d).) Before sending a 60-day notice alleging a failure to warn, the private enforcer must consult with an expert who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical. Based on the consultation, the person sending the notice or his or her attorney must execute a certificate of merit stating his or her

Rachel Doughty, Esq.

March 13, 2024

Page 2

belief that, based on the consultation, “there is a reasonable and meritorious case for the private action.” (*Id.*, subd. (d)(1).) The enforcer must attach to the Attorney General’s copy of the certificate of merit factual information sufficient to establish the basis of the certificate of merit. The Attorney General must maintain this information in confidence. (*Id.*, subds. (d)(1), (i).) The certificate of merit must document both exposure to the chemical and that there “is merit to each element of the action on which the plaintiff will have the burden of proof.” (Cal. Code Regs., tit. 11, § 3101, subd. (a).) Further, the certifier must certify that “the information relied upon does not prove that any affirmative defense has merit.” (*Ibid.*) If the Attorney General believes there is no merit to the action after reviewing the certificate of merit and meeting and conferring with the private enforcer, the Attorney General must serve a letter on the noticing party and the alleged violator stating this position and make the letter available to the public. (Health & Saf. Code, § 25249.7, subd. (e)(1).)

The referenced 60-day notice alleges that the company exposes persons to mercury in certain products without providing the required warning. We are not able to disclose the contents of the supporting information for the certificate of merit. However, based on our review, we have concluded that you have failed to provide sufficient information to indicate that there is a credible basis to conclude that there is merit to each element of the action on which plaintiff will have the burden of proof and that the information relied upon does not prove that any affirmative defense has merit. Thus, the 60-day notice does not give AYS authority to file suit in the public interest, or to settle claims based on the alleged violations, and we ask that you withdraw the notice immediately.

Sincerely,

/S/ Susan S. Fiering

SUSAN S. FIERING
Deputy Attorney General

For ROB BONTA
Attorney General

cc: Etsy, Inc. ATTN: Josh Silverman, CEO
jsilverman@etsy.com

Etsy, Inc., ATTN: Colin Stretch, Chief Legal Officer
cstretch@etsy.com
117 Adams St Brooklyn, NY 11202

Etsy, Inc., ATTN: Etsy Regulatory Request for Regulators or Government Officials
regulatory-intake@etsy.com

Exhibit C



RACHEL S. DOUGHTY
2748 Adeline Street, Suite A
Berkeley, CA 94703
Phone: (510) 900-9502, ext. 706
Email: rdoughty@greenfirerlaw.com
www.greenfirerlaw.com

March 15, 2024

By Electronic Mail and U.S. Mail

Etsy, Inc.
117 Adams St
Brooklyn, NY 11202
ATTN: Josh Silverman, CEO
jsilverman@etsy.com
ATTN: Colin Stretch, Chief Legal Officer
cstretch@etsy.com
ATTN: Etsy Regulatory Request for Regulators or Government Officials
regulatory-intake@etsy.com

Maria Villasenor
dba Capiroada Store
3721 S. 6000 W.
W. Valley City, UT 84128

Sherley Sajous
Registered Agent for
Oceans Beauty & Wellness LLC
573 NW 101 St
Miami, FL 33150
sajous85@gmail.com

RE: 60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) & Demand for Supply Chain Identification

Dear Mr. Silverman and Mr. Stretch, et.al:

This firm represents As You Sow (“Noticing Party”) in connection with this notice of violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code section 25249.5, et seq. (“Proposition 65”). As You Sow is a non-profit organization working to create a safe, just, and sustainable world in which protecting the environment and human rights is central to corporate decision making.

This letter constitutes notice to the addressees that they have violated and continue to violate provisions of Proposition 65 and its implementing regulations. Specifically, the alleged Violators to which this letter is addressed have violated and continue to violate the warning requirement at section 25249.6 of the California Health & Safety Code, which provides, “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual[.]”

As to Etsy, Inc., this letter serves as a supplemental 60-Day Notice and does not replace the January 18, 2024 60-Day Notice sent to Etsy, Inc.

Pursuant to California Health & Safety Code section 25249.7, subdivision (d), the Noticing Party, as defined in that section, intends to bring an enforcement action against the Violators sixty (60) days after effective service of this notice unless the public enforcement agencies listed in the attached Certificate of Service have commenced and are diligently prosecuting an action to rectify these violations. A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under Proposition 65, is enclosed with the copy of this notice served to the Violators. The specific details of the violations that are the subject of this Notice are provided below.

Description of Violations

The Violators have contravened the warning requirement at section 25249.6 of the California Health and Safety Code, which provides, “[no] person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to such individual.” Violators have manufactured, produced, packaged, imported, supplied, distributed, sold or otherwise provided the consumer products containing mercury listed below directly to consumers through Etsy.com’s website without providing the clear and reasonable warnings required by Proposition 65 and its implementing regulations, dating at least as far back as January 2, 2023, and continuing each day through the present.

- Time Period of Exposure: The violations have been occurring since at least January 2, 2023 and are continuing to this day.
- Provision of Proposition 65 Implicated: This Notice of Violation covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code, section 25249.6, and its implementing regulations.
- Chemical Involved: The listed chemical involved in this notice of violation is mercury and mercury compounds. This chemical is recognized by the State of California as a developmental toxin. Exposure to mercury or mercury compounds occurs through ingestion, inhalation, and dermal absorption when skin-lightening creams, sold on Etsy.com’s website, are applied.
- Types of Products: The specific types of products causing the violations are skin-lightening, whitening, and “smoothing” creams containing 1 ppm or more mercury or mercury compounds, including but not limited to those products specifically listed below in **Table 1**.

Table 1

Product	Thumbnail of Product	Etsy Storefront ¹	Parties Noticed
Deluxe Nadinola Bleaching Cream		PureJamaicanStore	Etsy, Inc.
Jing Zhuang Jinyiqi (“Yiqi”)		IGOTBEAUTYSTORE	Etsy, Inc.
La Tia Mana Crema		NaturalByLLC	Etsy, Inc.
La Tia Mana Crema		CapirotadaStore	Etsy, Inc. Maria Villasenor dba Capirotada Store
La Tia Mana Crema		TruVaShopTreasures	Etsy, Inc.
Magia Blanca de Michelle Marie Crema Blanqueadora		OceansBeautyWellness	Etsy, Inc. Oceans Beauty & Wellness LLC
Miss Key Crema Blanqueadora		OceansBeautyWellness	Etsy, Inc. Oceans Beauty & Wellness LLC
Parley Beauty Cream		GoldieCosmetics	Etsy, Inc.
Parley Beauty Cream		DYSHOPPINGCENTER	Etsy, Inc.

¹ This Supplemental Notice covers all skin-lightening, whitening, and “smoothing” creams containing mercury or mercury compounds, including those products listed in Table 1, whether or not sold presently at the storefront listed.

- **Description of Exposures:** This Notice addresses consumer product exposures to mercury and mercury compounds resulting from the acquisition, purchase, storage, consumption, or reasonably foreseeable use of cosmetics used to lighten, whiten, or “smooth” skin. Mercury is an additive or active ingredient in such cosmetics. Use of the items listed above in Table 1, as well as other items containing mercury as an active ingredient, results in human exposures to mercury.² Mercury exposure occurs in three main routes: ingestion, inhalation, or dermal absorption. Ingestion may occur post-application due to insufficient hand washing prior to eating or preparing food or touching of the mouth. Inhalation may occur due to the significant amount of mercury vapor produced by use of these creams, which can affect all household members. Dermal absorption may occur as these products are designed and specifically marketed for direct contact with skin. These exposures occur in residences throughout California where the products are used. No clear and reasonable warning is provided with these products regarding the developmental toxicity of using these products or specifically of mercury.

Pursuant to California Code of Regulations, title 11, section 3100, a Certificate of Merit is attached.³

Resolution of Claims Being Noticed

Based on the allegations set forth in this Notice, the Noticing Party intends to file a citizen enforcement lawsuit against the Violator unless it agrees to remedy the violations set forth above. If the Violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please contact the Noticing Party through its counsel identified below.

Preservation of Relevant Evidence

This Notice also serves as a demand that the Violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to mercury released from or during the storage, shipment, and use of skin lightening creams; purchases and sales information for such products; communications with any person relating to actual or potential exposures to mercury from the use of such products; representative exemplars of each unit of any of the brands listed above in Table 1 sold since January 2022; the content of internet displays for the products causing the violations; and all communications regarding the alleged violations.

Parties

This Notice is provided on behalf of the following person and organization:

As You Sow
2201 Broadway
Oakland, CA 94612
(510) 735-8158

² These products are also illegal adulterated cosmetics sold in violation of FDA regulations (see 21 C.F.R. § 700.13(d)), and California’s Sherman Act.

³ A second copy of the entire notice and Certificate of Merit is served on the Attorney General, clearly marked “Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040” with all supporting documentation required by 11 Cal. Code Regs., § 3102 attached thereto.

Page 5 of 6

Proposition 65 Notice

March 15, 2024

The Noticing Parties can be contacted through counsel as identified below:

Rachel Doughty
Greenfire Law, PC
2748 Adeline Street, Suite A
Berkeley, CA 94703
(510) 900-9502
rdoughty@greenfirerlaw.com

Demand for Supply Chain Contacts

Pursuant to California Code of Regulations title 27, article 6, section 25600.2, subdivision (g) you must promptly provide As You Sow (through its counsel) with the names and contact information for each of the manufacturers, producers, packagers, importers, suppliers, and distributors of each of the products listed above in Table 1. **We expect to receive this information within a week.**

Sincerely,



Rachel S. Doughty
Greenfire Law, PC

Attachments:

Certificate of Merit (All Recipients)

Certificate of Merit Support (Attorney General only)

Certificate of Service (All Recipients)

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (“Summary”) (Noticed Parties Only)

Page 6 of 6

Proposition 65 Notice

March 15, 2024

Certificate of Merit

California Health & Safety Code Section 25249.7, Subdivision (d)

I, Rachel Doughty, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 15, 2024

Greenvale Law, PC

By:



Rachel Doughty

Exhibit D



ROB BONTA
Attorney General

**State of California
DEPARTMENT OF JUSTICE**

1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 879-1300
Telephone: (510) 879-1300
Facsimile: (510) 622-2270
E-Mail: Susan.Fiering@doj.ca.gov

March 27, 2024

By U.S. mail and electronic delivery

Rachel S. Doughty, Esq.
2748 Adeline Street, Suite A
Berkeley, CA 94703
rdoughty@greenfirerlaw.com

RE: Proposition 65 Notice No. 2024-01113

Dear Ms. Doughty:

We write to you pursuant to the Attorney General's authority under Health and Safety Code section 25249.7, subdivision (e)(1)(A), which is part of the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65." We have reviewed the above 60-day notice of violation and accompanying certificate of merit that As You Sow LLC ("AYS") sent to Etsy, Inc. on January 18, 2024. The notice alleges that the company sells products that expose persons to mercury and mercury compounds without providing a clear and reasonable warning.

Based on our review of the notice, we have concluded that you have failed to provide sufficient information to indicate that there is a credible basis to conclude that there is merit to each element of the action on which plaintiff will have the burden of proof and that the information relied on does not prove that any affirmative defense has merit. The 60-day notice does not give AYS authority to file suit in the public interest, or to settle claims based on the alleged violations. We ask that you withdraw the notice immediately. Our position is discussed in more detail below.

Proposition 65 requires companies with ten or more employees to provide clear and reasonable warnings to persons prior to knowingly and intentionally exposing them to chemicals known to cause cancer or reproductive toxicity. (Health & Saf. Code, § 25249.6.) Persons acting in the public interest can bring a private action to enforce Proposition 65 at least sixty days after sending a 60-day notice to the alleged violators and public enforcers, unless the Attorney General or other public enforcer is diligently prosecuting an action against the violation. (*Id.*, § 25249.7, subd. (d).) Before sending a 60-day notice alleging a failure to warn, the private enforcer must consult with an expert who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical. Based on the consultation, the person sending the notice or his or her attorney must execute a certificate of merit stating his or her

Rachel Doughty, Esq.

March 27, 2024

Page 2

belief that, based on the consultation, “there is a reasonable and meritorious case for the private action.” (*Id.*, subd. (d)(1).) The enforcer must attach to the Attorney General’s copy of the certificate of merit factual information sufficient to establish the basis of the certificate of merit. The Attorney General must maintain this information in confidence. (*Id.*, subds. (d)(1), (i).) The certificate of merit must document both exposure to the chemical and that there “is merit to each element of the action on which the plaintiff will have the burden of proof.” (Cal. Code Regs., tit. 11, § 3101, subd. (a).) Further, the certifier must certify that “the information relied upon does not prove that any affirmative defense has merit.” (*Ibid.*) If the Attorney General believes there is no merit to the action after reviewing the certificate of merit and meeting and conferring with the private enforcer, the Attorney General must serve a letter on the noticing party and the alleged violator stating this position and make the letter available to the public. (Health & Saf. Code, § 25249.7, subd. (e)(1).)

The referenced 60-day notice alleges that the company exposes persons to mercury in certain products without providing the required warning. We are not able to disclose the contents of the supporting information for the certificate of merit. However, based on our review, we have concluded that you have failed to provide sufficient information to indicate that there is a credible basis to conclude that there is merit to each element of the action on which plaintiff will have the burden of proof and that the information relied upon does not prove that any affirmative defense has merit. Thus, the 60-day notice does not give AYS authority to file suit in the public interest, or to settle claims based on the alleged violations, and we ask that you withdraw the notice immediately.

Sincerely,

/S/ Susan S. Fiering

SUSAN S. FIERING
Deputy Attorney General

For ROB BONTA
Attorney General

cc: Etsy, Inc. ATTN: Josh Silverman, CEO (via U.S. mail and electronic delivery)
117 Adams St.
Brooklyn, NY 11202
jsilverman@etsy.com

Etsy, Inc., ATTN: Colin Stretch, Chief Legal Officer (via electronic delivery only)
cstretch@etsy.com

Etsy, Inc., ATTN: Etsy Regulatory Request for Regulators or Government Officials (via electronic delivery only)
regulatory-intake@etsy.com

Rachel Doughty, Esq.

March 27, 2024

Page 3

Maria Villasenor dba Capirotada Store (via U.S. mail and electronic delivery)
3721 S. 6000 W.
W. Valley City, Utah 84128

Sherley Sajous (via U.S. mail and electronic delivery)
Registered Agent for Oceans Beauty & Wellness LLC
573 NW 101 St.
Miami, FL 33150
Sajous85@gmail.com

SF1994IN0809

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Wells Fargo Center, South Tower, 355 S. Grand Avenue, Suite 4200, Los Angeles, California 90071-3103. On July 18, 2024, I caused the service of the foregoing document described as **DECLARATION OF NICHOLAS J. HOFFMAN IN SUPPORT OF DEFENDANT ETSY, INC.'S MOTION TO COMPEL ARBITRATION OR, IN THE ALTERNATIVE, TRANSFER VENUE**, addressed as follows:

Rachel S. Doughty
Jennifer Rae Lovko
GREENFIRE LAW, PC
2748 Adeline Street, Suite A
Berkeley, CA 94703
Telephone: (510) 900-9502
Fax: (510) 900-9502
Email: rdoughty@greenfirerlaw.com
rlovko@greenfirerlaw.com

Attorneys for Plaintiff
AS YOU SOW

- BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices.
 - (BY ELECTRONIC TRANSMISSION):** I caused such document to be served electronically to the person’s electronic service address by transmitting a PDF format copy of such document(s) to each person at the e-mail addresses set forth above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 18, 2024, at Los Angeles, California.

/s/ Miguelina Mendez
Miguelina Mendez